

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARY LOU GRANDE and MARK
DOUGLAS GRANDE,

Plaintiffs,

vs.

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR LEHMAN XS TRUST
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-7 (“US
BANK”), AND NATIONSTAR MORTGAGE
LLC D/B/A MR. COOPER, QUALITY LOAN
SERVICE CORPORATION OF
WASHINGTON and Doe Defendants 1 through
20,
Defendants.

CASE NO. 2:19-cv-00333-MJP

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

Pursuant to the Court’s Order of March 13, 2019 (Dkt. 8), the parties hereby submit this
Joint Status Report and Discovery Plan and inform the Court as follows:

I. Nature and Complexity of the Case.

A. Plaintiffs’ Statement of the Case

Plaintiffs Mary Lou Grande and Mark Douglas Grande bring this lawsuit against
defendants US Bank National Association, as Trustee for Lehman XS Trust Mortgage Pass-
Through Certificates Series 2007-7 (“US Bank”), and Nationstar Mortgage LLC d/b/a Mr.
Cooper (“Nationstar”), Quality Loan Service Corporation of Washington (“QLS”) and Doe

1 Defendants 1 through 20, for damages arising from a Foreclosure Fairness Act mediation under
2 RCW 61.24.163. This case was commenced on February 4, 2019 in the Washington State
3 Superior Court for Snohomish County under case No. 19-2-01126-31. On March 6, 2019, this
4 case was removed to the United States District Court for the Western District of Washington
5 under Case No. 2:19-cv-00333-MJP. All defendants have appeared, and Defendants US Bank
6 and Nationstar have filed a Motion to Dismiss Complaint set for the motion calendar on May
7 10, 2019.
8

9 Plaintiffs allege claims for breach of contract, breach of good faith and fair dealing,
10 violations of the Washington Consumer Protection Act, RCW 19.86 *et seq.*, the Equal Credit
11 Opportunity Act (ECOA) 15 U.S.C. §§ 1691-1691f (2006), Negligent Misrepresentation, and
12 the Tort of Outrage. Plaintiffs claim that they were offered and successfully completed a trial
13 period plan by Nationstar, that upon completion should have resulted in a permanent
14 modification of Plaintiffs' mortgage loan. After completing the trial plan period Nationstar
15 offered a permanent loan modification which the Plaintiffs timely accepted but Nationstar
16 refused to counter-sign and refused to accept payments the Plaintiffs attempted to make online
17 to that permanent loan modification. Plaintiffs assert that Nationstar is legally obligated to
18 permanently modify Plaintiffs' loan based on Plaintiffs' successful completion of a trial period
19 plan and acceptance of the permanent loan modification offer that was signed on July 28, 2017
20 and received by Nationstar on August 8, 2017.
21
22

23 **B. Defendants' Statement of the Case**

24 The parties' dispute centers on Plaintiffs' unsuccessful attempts to obtain a permanent
25 loan modification. Nationstar offered Plaintiffs a trial period payment plan followed by an offer
26 of a permanent loan modification in July of 2017. At most, the allegations of the Complaint
establish that Plaintiffs failed to accept the offered loan modification because they could or

would not comply with the terms of the offer to timely and properly execute and return the original loan modification documents that Nationstar provided. Defendants submit that Nationstar was under no legal or contractual duty pursuant to the Deed of Trust to modify Plaintiffs' Loan, Defendants further assert the claims against US Bank National Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates Series 2007-7 are without merit.

II. Proposed Deadline to Join Additional Parties.

The parties propose May 31, 2019 as the deadline to join additional parties.

III. Consent to Magistrate Judge

The Parties do not consent to a Magistrate Judge conducting all pre-trial proceedings.

IV. Proposed Discovery Plan

A. Initial Disclosures

The parties will exchange initial disclosures by April 17, 2019, which is the deadline set forth by the Court in its Order of March 13, 2019 (Dkt No. 8).

B. Subjects, Timing, and Potential Phasing of Discovery

The parties agree that discovery will be framed by the pleadings. The parties do not anticipate needing to phase discovery at this time. The parties agree to a fact discovery cutoff date of **March 29, 2019**.

C. Electronically Stored Information

Counsel have informed their respective clients of the need to protect and preserve ESI in their possession that may be relevant to this case. Because this case is not procedurally or factually complex, the parties do not anticipate there will be much, if any, ESI discovery required. Accordingly, the parties do not feel a formal ESI discovery order is necessary at this time. In the event any issues with discovery or production of ESI arise that the parties cannot resolve informally, the parties agree such disputes should be presented to the Court using LCR 37(a)(92)'s expedited joint motion procedure. Should an ESI discovery order become necessary

1 later in the case, the parties agree to jointly prepare such an order for the court's review and
2 entry.

3 ***D. Privilege Issues***

4 The parties shall assert attorney-client privilege, attorney work product protection, or
5 any other applicable privilege or protection in response to any specific discovery requests to
6 which one or more of the privileges apply. The parties shall further affirmatively indicate within
7 their discovery responses whether privileged documents exist and are being withheld on the
8 basis of an asserted privilege. Privilege logs will be produced concurrently with each party's
9 discovery responses. *See also*, Section 4.E., *infra*.

10 ***E. Proposed Limitations on Discovery***

11 The Defendants in this case include the mortgage loan owner/beneficiary and the loan
12 servicer. At all relevant times, there existed a principal-agent relationship between the two
13 Defendants. As such, the parties understand that this relationship may impact the scope of
14 discoverable information. The scope of privilege in discovery will be governed by the Federal
15 Rules of Civil Procedure, the Federal Rules of Evidence, and by the applicable Local Rule or
16 case law. Beyond recognizing privilege issues and their potential impact on the case, the parties
17 do not anticipate the need for any changes or limitations on discovery at this time. The parties
18 reserve the right to seek modifications in the future.

19 ***F. Need for Discovery Related Orders***

20 The parties anticipate the need for protective order to govern the use of information in
21 discovery designated as "confidential." The parties agree to use the Model Stipulated Protective
22 Order, as modified by mutual agreement. The parties expect to file a proposed Stipulated
23 Protective Order by May 1, 2019.

24 The parties request the Court enter an Order pursuant to Fed.R.Evid. 502(d).

25 **V. Views on Rule 26(f)(1) Disclosures**

26 The parties' views, proposals and agreements on all items set forth in Local Civil Rule
26(f)(1) are as follows:

A. Prompt Case Resolution

The parties are open to informal settlement discussions at the present time and anticipate being amenable to such discussions as the case progresses.

B. Alternative Dispute Resolutions

In the interest of resolving this matter in a just, timely, and cost-effective manner, the parties will consider resolution by private mediators.

C. Related Cases

On September 28, 2018, the Defendants recorded a Notice of Trustee's sale for the Plaintiffs' property located at 25905 5th Avenue Northeast, Arlington, WA 98223 ("Property"). The Trustee's sale was set for February 8, 2019 but was continued after the filing of this lawsuit and now subject to a judicial hold pending the outcome of this matter.

D. Discovery Management

See Paragraph 4.C, *supra*. The parties agree that discovery requests, responses, initial disclosures, deposition notices, and other case related materials not filed with the Court can be served electronically via email. The parties agree that any discovery disputes should be presented to the Court using LCR 37(a)(2)'s expedited joint motion procedure.

E. Anticipated Discovery Sought

See Paragraph 4B, *supra*. The parties further respond to this topic as follows:

Plaintiffs currently intend to conduct discovery on the following topics:

1. Defendants' records and handling of Plaintiffs' loan file and Defendants' general policies and procedures with regard to loan modifications.
2. Defendants' records and handling of loan modifications with the servicer's name change to Mr. Cooper.
3. Processes and Procedures, contracts, and other agreements relevant to the Plaintiffs' loan signed between Nationstar LLC d/b/a Mr. Cooper and U.S. Bank.
4. Communications between Nationstar LLC d/b/a Mr. Cooper and U.S. Bank regarding the Plaintiffs' loan modifications.

5. Other discovery regarding the allegations in the Complaint.

Defendants currently intend to conduct discovery on the following topics:

1. Plaintiffs' communications with Defendants regarding Plaintiffs' request for the loan modification at issue in this case.

2. Plaintiffs' records pertaining to Plaintiffs' attempts to timely return the original loan modification documents at issue in the case.

3. Other discovery regarding the allegations of the Complaint.

F. Phasing Motions.

The parties do not anticipate filing any phasing motions at this time. If a party later concludes that issues in this case require phasing, those matters will be promptly brought to the attention of the court and parties.

G. Preservation of Discoverable Information.

The parties have undertaken efforts to preserve potentially discoverable information in their respective possession, custody and control.

H. Privilege Issues.

See Paragraph 4.E., *supra*.

The parties agree that information inadvertently produced in discovery that is otherwise privileged or protected work product shall be immediately returned to the producing party, sequestered, or destroyed, except that the receiving party may retain a copy of the information solely for the purpose of challenging the designation of privilege or work product pursuant to Fed.R.Civ.P. 26(b)(5). Inadvertent production shall not constitute a waiver of such protection, if (i) such information appears on its face to have been inadvertently produced, or (ii) the producing party provides notice within a reasonable amount of time after the inadvertent production.

The parties request the court enter an order pursuant to Fed.R.Evid. 502(d).

I. Model Protocol for Discovery of ESI

See Paragraph 4.C, *supra*.

J. Alternatives to Model Protocol

See Paragraph 4., *supra*.

VI. Discovery and Pleading Deadlines

Event	Deadline
Exchange Initial Disclosures	April 17, 2019
Deadline to Join Additional Parties	May 31, 2019
Deadline to Add Claims or Defenses	January 31, 2020
Fact Discovery Cut-Off	March 29, 2020
Expert Discovery Deadline	April 29, 2020
Dispositive Motion Deadline	June 1, 2020
Trial	At least 90 days following final resolution of dispositive motions.

VII. Bifurcation

The parties do not anticipate any bifurcation of issues at trial at this time. If a party later concludes that issues in this case requires bifurcation, those matters will be promptly brought to the attention of the court and parties.

VIII. Pretrial Statements

The parties believe a pretrial statement and pretrial order called for by Local Civil Rule 16(d),(h)(i) and (k) and 16.1 should be utilized in this case.

IX. ADR / Individualized Trial Program

If the matter is not dismissed on dispositive motions, the parties prefer private mediation at the close of discovery. The parties decline an Individualized Trial Program for this case.

1 **X. Suggestions for Shortening or Simplifying the Case**

2 At present, the parties do not have any other suggestions for shortening or simplifying
3 the case.

4 **XI. Trial Date**

5 At least 90 days after resolution of dispositive motions, if any, or 60 days following the
6 dispositive motions deadline if no motions are filed.

7 **XII. Jury or Non-Jury Trial**

8 Plaintiffs request a jury trial. Neither defendant requests a jury trial. Any claim for
9 injunction relief should be resolved by the court.

10 **XIII. Trial Days**

11 The parties expect this cases will require 5 trial days.

12 **XIV. Trial Counsel**

13 The names, addresses, and telephone numbers of all trial counsel are listed below as
14 undersigned counsel.

15 **XV. Trial Date Conflicts**

16 The parties assume any trial in this matter will occur after June 1, 2020. Based on that
17 understanding:

- 18 • Plaintiffs do not have any known conflicts after June 1, 2020 at this time
19 • Defendants do not have any known conflicts after June 1, 2020 at this time.

20 **XVI. Service**

21 Plaintiffs have effected service on all Defendants.

22 **XVII. Scheduling Conference**

23 Absent a material deviation or specific request from the court, the parties do not require
24 a scheduling conference with the court before it enters a scheduling order in this case.

25 **XVIII. Initial Disclosures – LCR 7-1**

26 Defendant Nationstar Mortgage LLC d/b/a Mr. Cooper filed its initial corporate
disclosure statement on March 7, 2019 (Dkt No. 3). Defendant U.S. Bank, as Trustee, filed its
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1 initial corporate disclosure statement on March 7, 2019 (Dkt No. 4). Defendant Quality Loan
2 Service Corporation of Washington filed its initial corporate disclosure statement on March 14,
3 2019 (Dkt No. 10).

4 DATED this 24th day of April 2019.

5
6 /s/ Christina L Henry

7 Christina L Henry, WSBA 31273
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Association, as Trustee for Lehman XS
Trust Mortgage Pass-Through Certificates
Series 2007-7N*

CERTIFICATE OF SERVICE

I, Christina L Henry, declare as follows:

I am a citizen of the United States and of the State of Washington, over the age of 21 years, not a party to the above-entitled action and competent to be a witness.

On April 24, 2019, I caused to be served a Joint Status Report and Discovery Plan electronically via USDC court system CM/ECF:

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 24th day of April 2019, at Seattle, Washington.

Christina L Henry